

## CHAPTER 4    CONTESTED WATER AND SEWER BILLS

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### 400            RIGHT TO CHALLENGE BILLS

- 400.1        The owner or occupant of the premises may contest any water bill or sanitary sewer service bill rendered for the premises by following the procedures set forth in this chapter.
- 400.2        In all cases where a bill is contested, the procedures set forth in this chapter shall apply and take precedence over any inconsistent provisions of this title to the extent of that inconsistency.

400.3 Any owner or occupant shall have the right to inspect all Department of Public Works records regarding his or her account upon request during the normal business hours of the Department.

400.4 [Deleted] 40 DCR 1300, 1306 (February 12, 1993).

400.5 [Deleted] 40 DCR 1300, 1306 (February 12, 1993).

**AUTHORITY:** Unless otherwise noted, the authority for this chapter is §§401 and 402 of Reorganization Plan No. 3 of 1967, effective August 11, 1967, filed August 11, 1967, D.C. Code Vol. 1 at 126 (1981 Ed.); §3 of the Second Emergency Water and Sewer Bill Payment Act of 1977, D.C. Act 2-112, 24 DCR 4830 (December 16, 1977), §§IV(a) and V of Reorganization Plan No. 4 of 1983, 30 DCR 6428, effective March 2, 1984; Mayor's Order 91-176, 38 DCR 6821, dated October 24, 1991; the District of Columbia Water and Sewer Operations Amendment Act of 1990, effective June 13, 1990 (D.C. Law 8-136, D.C. Code §43-1527 *et seq.*).

**SOURCE:** Final Rulemaking published at 24 DCR 8315 (March 24, 1978), incorporating text of Proposed Rulemaking published at 24 DCR 6206 (January 27, 1978), 12 DCRR §§400.37 and 400.37.2; as amended by Final Rulemaking published at 40 DCR 1300, 1306 (February 12, 1993).

**EDITOR'S NOTE:** Sections 400.2 and 400.3 issued under D.C. Act 2-112, Second Emergency Water and Sewer Bill Payment Act of 1977 expired on the 90th day following the effective date of the law. No permanent law was enacted.

Transfer of functions - §219 of the "Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996," D.C. Law 11-111, effective April 18, 1996, transferred the functions of the Water and Sewer Utility Administration of the Department of Public Works to the independent District of Columbia Water and Sewer Authority.

## 401 NOTICE OF RIGHT TO CHALLENGE BILLS

401.1 Each water and sewer bill shall contain a written statement advising the owner or occupant of the following:

- (a) The owner or occupant may challenge the bill in accordance with the provisions of §402.1;
- (b) Upon receipt of a challenge to a water and sewer service bill, the Utility will investigate the bill;
- (c) If the Utility finds the bill to be erroneous, it shall adjust the bill accordingly and refund any overcharge paid;
- (d) The owner or occupant will not be subject to any penalty, interest charge or termination of service for nonpayment of the disputed bill until the owner or occupant has been advised in writing of the results of the investigation;
- (e) The owner or occupant will be notified in writing of the results of the investigation;
- (f) If the bill has not been paid, the owner or occupant will be notified in writing of the amount found to be due as a result of the investigation, and the date on which the bill shall be paid;
- (g) The owner or occupant may request a hearing in writing, within fifteen (15) days, if he or she is not satisfied with the decision of the Utility; and

- (h) The owner or occupant may request a written statement of billing, for the most recent eighteen (18) month billing and payment history of the account. Upon receipt of a written request, the Utility shall prepare this statement of billing within thirty (30) days.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1307 (February 12, 1993).

HISTORICAL NOTE: Prior to February 12, 1993, the Department of Environmental Services published Final Rulemaking at 24 DCR 8315 (March 24, 1978), incorporating text of Proposed Rulemaking published at 24 DCR 6206, 6207 (January 27, 1978), 12 DCRR §400.37.3.

## 402 INITIATING A CHALLENGE TO A BILL

402.1 An owner or occupant may challenge the most recent charges assessed by the Bureau by doing either of the following:

- (a) Paying the bill and notifying the Department in writing that he or she believes the bill to be incorrect and is paying under protest; or
- (b) Not paying the current charges contained in the bill and notifying the Utility, in writing, within ten (10) working days after receipt of the bill of the reason(s) why the bill is believed to be incorrect.

402.2 Challenges received after the ten-day (10) period stated in §402.1 will be deemed to have been filed in an untimely manner and will not stop the imposition of a penalty for nonpayment of charges or the possibility of termination of service for nonpayment.

402.3 Nothing in this section shall be interpreted to relieve the owner or occupant of responsibility for paying all previously or subsequently rendered, uncontested water and sewer service charges, penalties, interest, and administrative costs.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1307 (February 12, 1993).

HISTORICAL NOTE: Prior to February 12, 1993, the Department of Environmental Services published Final Rulemaking at 24 DCR 8315 (March 24, 1978), incorporating text of Proposed Rulemaking published at 24 DCR 6206, 6207 (January 27, 1978), 12 DCRR §400.37.1.

## 403 INVESTIGATION OF CHALLENGED BILL

403.1 Upon receipt of a challenge to a water and sewer bill, the Utility shall suspend the obligation of the owner and occupant to pay the contested charges contained in the bill pending investigation.

403.2 As necessary to investigate the challenge, the Utility shall do any or all of the following:

- (a) Verify the computations made in the formulation of the water and sewer charges;
- (b) Verify the meter reading for possible meter overread or doubtful registration;



- (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
- (d) Check the meter for malfunction;
- (e) Check the water-cooled air conditioning system, if any, for malfunction; and
- (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

**SOURCE:** Final Rulemaking published at 40 DCR 1300, 1308 (February 12, 1993).

**HISTORICAL NOTE:** Prior to February 12, 1993, the Department of Environmental Services published Final Rulemaking at 24 DCR 8315 (March 24, 1978), incorporating text of Proposed Rulemaking published at 24 DCR 6206, 6207 (January 27, 1978), 12 DCRR §400.37.4.

#### 404 REPORT AND ADJUSTMENT

- 404.1 Upon completion of the investigation, the Utility shall issue a written decision containing a brief description of the investigation and findings.
- 404.2 On the basis of the investigation and findings, the Utility shall make appropriate adjustments to the bill for water or sewer charges in accordance with the provisions of this chapter.

**SOURCE:** Final Rulemaking published at 40 DCR 1300, 1308 (February 12, 1993).

**HISTORICAL NOTE:** Prior to February 12, 1993, the Department of Environmental Services published Final Rulemaking at 24 DCR 8315 (March 24, 1978), incorporating text of Proposed Rulemaking at 24 DCR 6206, 6208 (January 27, 1978), 12 DCRR §400.37.5.

#### 405 ADJUSTMENT FOR METER OR COMPUTATION ERRORS

- 405.1 If the investigation discloses meter overread or faulty computation, adjustment(s) shall be made to reflect the correct charges, as indicated by the correct reading or corrected computations.
- 405.2 If the investigation reveals doubtful meter registration or possible meter malfunction, the Department shall remove the meter and test it.
- 405.3 If the results of the tests under §405.2 verify doubtful registration or meter malfunction, the bill shall be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available.
- 405.4 If records for up to three (3) comparable billing periods are not available, the bill shall be adjusted in accordance with the provisions of §408.2.

**SOURCE:** Final Rulemaking published at 24 DCR 8315 (March 24, 1978), incorporating text of Proposed Rulemaking published at 24 DCR 6206, 6208 (January 27, 1978), 12 DCRR §§400.37.5(a) and 400.37.5(b); as amended by Final Rulemaking published at 40 DCR 1300, 1309 (February 12, 1993).

EDITOR'S NOTE: Sections 405.1 to 405.3 issued under D.C. Act 2-112, Second Emergency Water and Sewer Bill Payment Act of 1977 expired on the 90th day following the effective date of the law. No permanent law was enacted.

#### 406 ADJUSTMENT FOR HOUSEHOLD LEAKS OR AIR CONDITIONING MALFUNCTION

- 406.1 The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunctioning water-cooled air conditioning equipment, are the responsibility of the owner or occupant.
- 406.2 If the investigation discloses leaking faucets, leaking fixtures, or similar leaks, no adjustment will be made to the bill for any portion of the excessive consumption attributable to those leaks.
- 406.3 If the investigation discloses a malfunctioning water-cooled air conditioning system, no adjustment will be made to the bill for any portion of the excessive consumption attributable to that air conditioning system malfunction.

SOURCE: Final Rulemaking published at 24 DCR 8315 (March 24, 1978), incorporating text of Proposed Rulemaking published at 24 DCR 6206, 6208 (January 27, 1978), 12 DCRR §400.37.5(c) and 400.37.5(d).

EDITOR'S NOTE: Section 406 issued under D.C. Act 2-112, Second Emergency Water and Sewer Bill Payment Act of 1977 expired on the 90th day following the effective date of the law. No permanent law was enacted.

#### 407 ADJUSTMENT FOR HOUSE-SIDE OR UNDERGROUND LEAKS

- 407.1 When a house-side meter leak is discovered on a District-owned meter, the Department shall make the repairs. If it is a privately owned water meter, the Department may make the repairs and bill the owner or occupant for the costs associated with repairing or replacing the meter. Owners of privately owned water meters may have a licensed plumber make the necessary repairs, if the Department has not determined that the leak constitutes an emergency or unsafe condition.
- 407.2 Once the house-side meter leak has been repaired, the bill will be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available.
- 407.3 If the investigation discloses a leak of indeterminate source in the underground service, the Department shall determine whether the leak is on public space or on private property.
- 407.4 If the leak is the responsibility of the District, the bill shall be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available.
- 407.5 If the leak is the responsibility of the owner or occupant, the bill shall be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available if all of the following conditions and requirements are met:



- (a) There has been no negligence on the part of the owner or occupant in notifying the Department of unusual conditions indicative of a waste of water;
- (b) The owner has taken steps to have the leak repaired promptly upon discovery of a leak on private property;
- (c) Repairs have been made by a District registered plumber and approved by the Chief, Plumbing Inspection Branch, Department of Consumer and Regulatory Affairs, or his or her designee in accordance with D.C. Code §6-405 (1995 Repl. Vol.);
- (d) Form ES-138 has been obtained from the Department, completed in full, signed by the owner or occupant, and certified by the plumber who made the repairs; and
- (e) The request for adjustment has been made promptly.

407.6 If records for up to three (3) comparable billing periods are not available, the bill shall be adjusted in accordance with the provisions of §408.2.

SOURCE: Final Rulemaking published at 24 DCR 8315 (March 24, 1978), incorporating text of Proposed Rulemaking published at 24 DCR 6206, 6208 (January 27, 1978), 12 DCRR §§400.37.5(e) and 400.37.5(f); as amended by Final Rulemaking published at 40 DCR 1300, 1309 (February 12, 1993).

EDITOR'S NOTE: Sections 407.4 and 407.5 issued under D.C. Act 2-112, Second Emergency Water and Sewer Bill Payment Act of 1977 expired on the 90th day following the effective date of the law. No permanent law was enacted.

#### 408 INCONCLUSIVE FINDINGS

408.1 In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, the bill shall be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available.

408.2 If there are no records for previous comparable periods for the premises, the bill shall be adjusted on the basis of a formula which reflects fairly the average water consumption of comparable premises and users in the District for a comparable billing period.

SOURCE: Final Rulemaking published at 24 DCR 8315 (March 24, 1978), incorporating text of Proposed Rulemaking published at 24 DCR 6206, 6208 (January 27, 1978), 12 DCRR §400.37.5(g).

EDITOR'S NOTE: Section 408 issued under D.C. Act 2-112, Second Emergency Water and Sewer Bill Payment Act of 1977 expired on the 90th day following the effective date of the law. No permanent law was enacted.

#### 409 NOTICE OF INVESTIGATION RESULTS AND ADJUSTED BILLS

409.1 After reviewing the report and making any adjustments to the water or sewer service charges, in accordance with the provisions of this chapter, the Utility shall mail written notice of the following to the owner or occupant:

- (a) The results of the investigation; and
- (b) If the bill has been adjusted, an amended bill reflecting any adjustment(s) made.

409.2 An owner or occupant may appeal the Administrator's decision by filing a petition for an administrative hearing within fifteen (15) calendar days.

409.3 The new date for payment of the original or adjusted bill, as set forth in the notice, shall not be less than fifteen (15) days after the mailing date of the notice.

409.4 If the original bill was paid and an adjustment has been made, the amount of the overcharge shall be refunded to the party who paid the bill.

409.5 The notice shall also inform the challenging party of the right to appeal the determination and bill (or amended bill) set forth in the notice, and shall set forth the following:

- (a) The requirements for filing the appeal under §410.2; and
- (b) If an appeal is filed, there will be no penalty or service cut-off for non-payment of the bill until the appeal has been considered and he or she has been notified in writing of the results of the appeal and a new date for payment.

**SOURCE:** Final Rulemaking published at 24 DCR 8315 (March 24, 1978), incorporating text of Proposed Rulemaking published at 24 DCR 6206, 6210 (January 27, 1978), 12 DCRR §§400.37.6 and 400.37.7; as amended by Final Rulemaking published at 40 DCR 1300, 1309 (February 12, 1993).

**EDITOR'S NOTE:** Sections 409.3 to 409.5 issued under D.C. Act 2-112, Second Emergency Water and Sewer Bill Payment Act of 1977 expired on the 90th day following the effective date of the law. No permanent law was enacted.

## 410 ADMINISTRATIVE HEARINGS

410.1 The purpose of hearings held under this section are to provide an owner or occupant with an opportunity to appeal the decision of the Administrator of the Utility pertaining to the validity of any water and sewer service charge.

410.2 The rules of procedure set forth in this section shall govern the form, content and filing of requests for a hearing to contest water and sewer service charges, interest, penalties, and fees.

410.3 An owner or occupant shall have the right to do the following:

- (a) Represent himself or herself or be represented by an attorney;
- (b) To present his or her case or defense by oral or documentary evidence;
- (c) To submit the evidence in rebuttal; and
- (d) To conduct a cross-examination as may be required for a full disclosure of the facts.



SOURCE: Final Rulemaking published at 40 DCR 1300, 1310 (February 12, 1993).

HISTORICAL NOTE: Prior to February 12, 1993, the Department of Environmental Services published Rulemaking published at 24 DCR 8315 (March 24, 1978), incorporating text of Proposed Rulemaking published at 24 DCR 6206, 6210 (January 27, 1978), 12 DCRR §400.37.5.

#### **411 COMPUTATION OF TIME**

411.1 In computing any period of time prescribed or allowed by this chapter, by notice, order, rule or regulation to the Department, or by statute, the day of the act, event, bill, notice or default after which the designated period of time begins to run is not to be included.

411.2 The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until midnight of the next day which is not a Saturday, Sunday, or legal holiday.

411.3 Whenever a party is required to serve papers or do some act within a prescribed period, and does so by mail, three (3) days shall be added to the prescribed period.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1310 (February 12, 1993).

#### **412 PETITION FOR ADMINISTRATIVE HEARING**

412.1 An owner or occupant may file a petition for an administrative hearing to review the Utility's decision within fifteen (15) calendar days.

412.2 A petition for administrative hearing shall be made in writing within fifteen (15) calendar days of the date of the notice specified by §409.1 of this chapter.

412.3 Petitions for review shall be filed with the Office of the Director, Department of Public Works, Sixth Floor, 2000 14th Street, N.W., Washington, D.C. 20009.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1311 February 12, 1993).

#### **413 SURETY BOND/DEPOSIT**

413.1 The owner or occupant shall post a surety bond or deposit, equal to not less than one-half (1/2) of the outstanding water and sewer charges, penalties, and interest owed at the time the request for administrative hearing is made.

413.2 The requirement to post a surety bond or deposit shall not apply to an owner who occupies the single family house where the contested charges were incurred.

413.3 The deposit shall be in the form of a certified check or money order. The deposit shall be placed in an escrow account and accrue interest. The interest rate shall be determined based on the Annualized Treasury Bill Yield Rate, which is published in nationally circulated newspapers, including the Washington Post and the New York Times. If more than one rate is published, the lowest rate shall be used.



- 413.4 A surety bond shall accrue interest only if it is in a form that is equivalent to cash.
- 413.5 Upon receipt of the surety bond or deposit, the portion of the water and sewer charges being challenged shall not be subject to penalty or interest, and service shall not be terminated for non-payment of the contested charges, until a final decision has been rendered.
- 413.6 The owner or occupant shall pay all charges not in dispute within thirty (30) days of the date that the bill for such charges is rendered.

**SOURCE:** Final Rulemaking published at 40 DCR 1300, 1311 (February 12, 1993).

#### 414 HEARING OFFICERS

- 414.1 Upon the filing of a request for hearing, the Director may conduct a hearing or assign a hearing officer ("hearing officer") to the case. Thereafter, all motions and procedural requests shall be addressed to the hearing officer. The Director shall designate a chief hearing officer.
- 414.2 No hearing officer shall conduct a hearing in a proceeding in which he or she is prejudiced or partial with respect to any owner or occupant, or where that officer has any interest in the matter pending for decision.
- 414.3 No hearing officer shall have the authority to overrule any law or regulation of the District of Columbia.
- 414.4 The hearing officer shall have the following powers:
- (a) To give notice concerning hearings;
  - (b) To administer oaths and affirmations;
  - (c) To examine witnesses and to take testimony;
  - (d) To issue subpoenas and order the parties to submit documents or other evidence;
  - (e) To request that investigative reports be prepared by the Utility in instances where the reports do not exist;
  - (f) To grant requests for discovery, if the discovery is necessary for the disposition of the appeal;
  - (g) To rule upon offers of proof and to receive relevant evidence;
  - (h) To regulate the course and conduct of hearings;
  - (i) To hold conferences, before or during a hearing, for the settlement or simplification of issues;

- (j) To rule on motions and to dispose of procedural requests or similar matters;
- (k) To issue final decisions as provided in this section or by law; and
- (l) To take any other action authorized by this chapter, the Administrative Procedure Act, or by any other applicable statute, rule or regulation.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1312 (February 12, 1993).

#### 415 SCHEDULING OF HEARING/DEFAULT JUDGMENT

- 415.1 The hearing officer shall set the date, time and place of the hearing.
- 415.2 The hearing officer may agree to reschedule the hearing upon the written request of one of the parties for good cause shown or upon the consent of all parties.
- 415.3 The failure to appear at the scheduled hearing or to request, in advance, that the scheduled hearing be postponed, may result in a default judgment.
- 415.4 The hearing officer may issue a final order affirming the imposition of any charges, fines, interest and penalties that the Utility has assessed against the property by default.
- 415.5 Failure to comply with the conditions imposed by the hearing officer may result in the entry of a default judgment.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1313 (February 12, 1993).

#### 416 DISMISSAL OF HEARINGS

- 416.1 An owner or occupant may request a dismissal by filing a written petition with the hearing officer or orally requesting dismissal at the hearing.
- 416.2 The hearing officer may, on his or her own motion, dismiss a hearing demand, either entirely or as to any stated issue, under any of the following circumstances:
  - (a) Where the matter has previously been the subject of a hearing or an owner or occupant has previously been afforded an opportunity for a hearing on the same matter, and the owner or occupant has failed to preserve his or her right to a hearing;
  - (b) Where the owner or occupant demanding a hearing is not a lawful owner or occupant or does not otherwise have a right to a hearing. This would include, but is not limited to, cases in which the individual is not the owner or occupant as defined in D.C. Law 8-136;
  - (c) Where the owner or occupant has failed to file a timely hearing demand pursuant to the provisions of this chapter;



- (d) Where the hearing officer, in his or her opinion, finds that a petition filed in any proceeding does not raise a question of fact or law or the claim is frivolous.

416.3 The dismissal shall be in the form of an order by the hearing officer which shall contain a statement of facts and law and the reason for the dismissal. No such order shall be necessary where all the parties have expressly requested the dismissal.

416.4 The dismissal order shall be given to the parties or mailed to them at their last known address.

**SOURCE:** Final Rulemaking published at 40 DCR 1300, 1314 (February 12, 1993).

## **417 SERVICE OF DOCUMENTS**

417.1 The initial document filed by any party shall state on the first page the name and post office address of the person or persons to be served with any documents filed in the proceeding.

417.2 Whenever any document is filed by any party with the hearing officer, copies shall be served by the filing party upon all parties to the proceedings.

417.3 Service may be made by regular mail, by registered or certified mail, or by personal delivery.

417.4 Service upon a party or an attorney of record or designated representative of a party shall occur at the time of hand delivery; or if by mail, to the address of record, by the postmark date plus three (3) days, as prescribed in §411.3.

**SOURCE:** Final Rulemaking published at 40 DCR 1300, 1314 (February 12, 1993).

## **418 PROOF OF SERVICE**

418.1 A party filing a document with the hearing officer shall furnish written proof that a copy also has been sent to every other party.

418.2 The proof shall show the date and manner of service and may be as follows:

- (a) Written acknowledgement of service;
- (b) Affidavit of the person making service;
- (c) Certificate of an attorney of record; or
- (d) By other proof satisfactory to the hearing officer.

- 418.3 Acknowledgement of service may be made by any person at the address shown on the document who is sixteen (16) years of age or older.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1315 (February 12, 1993).

**419 STYLE OF PLEADINGS AND PETITIONS**

- 419.1 All pleadings, notices, orders and other papers filed under the provisions of this chapter shall be captioned "**Before the Department of Public Works of the District of Columbia.**"
- 419.2 A document shall contain the Department Docket Number if assigned.
- 419.3 Each petition filed under this chapter shall be notarized and shall be styled in the manner of pleadings as provided in this section.
- 419.4 Each document shall contain a title appropriate to the proceedings which describe generally the type of document, such as one of the following:

In the Matter of the \_\_\_\_\_  
(Charges, Interest,  
\_\_\_\_\_ for the water and sewer  
Penalties, and Fees)  
services rendered to \_\_\_\_\_  
\_\_\_\_\_ owned  
(Property Address)  
by \_\_\_\_\_  
(Name of Owner of Record)  
and occupied by \_\_\_\_\_  
(Name of Occupant)

- 419.5 Upon filing, each petition shall be given a docket number and shall become a matter of public record.

- 419.6 Each petition shall contain the following:

- (a) Facts related to the water and sewer service account including the following:
- (1) The account number;
  - (2) The service address;
  - (3) The name of the party who holds the account;



- (4) The type of property and number of units;
  - (5) The date of the last bill; and
  - (6) The number of people residing at the service address during the period of the disputed bill.
- (b) A concise statement of the facts concerning the disputed charges;
  - (c) Supporting data, facts, or evidence upon which petitioner relies as justification for disputing the water and sewer service charges; and
  - (d) A request for adjustment of the water and sewer service charges.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1315 (February 12, 1993).

## **420 HEARINGS**

- 420.1 All hearings shall be open to the public.
- 420.2 Hearings shall be held at the location indicated on the hearing notice; Provided, that the hearing officer, at his or her discretion, may establish other permanent or temporary hearing locations.
- 420.3 The hearing officer shall ensure that the hearing is conducted in an orderly manner and shall have the authority to exclude any owner or occupant or other person from the hearing on the grounds of substantial interference with, or obstruction of, an orderly hearing process.
- 420.4 If an owner or occupant requests a hearing on charges from more than one water and sewer service billing period, the Department may consolidate the hearings.
- 420.5 The Rules of Civil Procedure and the Rules of Criminal Procedure for the Superior Court of the District of Columbia are not binding for these administrative hearings.
- 420.6 All testimony shall be given under oath or affirmation administered by the hearing officer.
- 420.7 The burden of proof shall be on the parties seeking relief.
- 420.8 The standard of proof shall be a preponderance of the evidence.
- 420.9 Hearing officers assigned to render a decision in any proceedings under this chapter shall not communicate, directly or indirectly, with any person involved in or affiliated with any of the parties, except upon notice and opportunity for all parties to participate.
- 420.10 If any person refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness, refuses to be examined, or refuses to obey any lawful

order of the hearing officer, the hearing officer may petition the Superior Court of the District of Columbia for an order requiring compliance.

- 420.11 The hearing officer shall follow the general rules of evidence applicable to administrative hearings under the District of Columbia Administrative Procedure Act, P.L. 90-614 (D.C. Code §1-1501 *et seq.* (1992 Repl. Vol.)).

SOURCE: Final Rulemaking published at 40 DCR 1300, 1317 (February 12, 1993).

## 421 ARGUMENT BEFORE THE HEARING OFFICER

- 421.1 The hearing officer shall give the parties to the proceeding adequate opportunity during the course of a hearing for the presentation of arguments in support of or in opposition to the petition for administrative review, motions, objections, and exceptions to the rulings of the Officer.

- 421.2 The hearing officer may impose time limits on the arguments.

- 421.3 Oral argument shall be transcribed and will be available as part of the record.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1318 (February 12, 1993).

## 422 FINAL DECISIONS

- 422.1 The hearing officer shall issue a final decision containing a concise statement of facts and conclusions of law.

- 422.2 The final decision shall include specific findings on each issue of fact and shall be based upon reliable, probative, and substantive evidence. Mere conclusory assertions or summaries of evidence shall not constitute a sufficient basis for findings or fact within the meaning of this section.

- 422.3 The final decision of the hearing officer shall be based upon consideration of the entire record of the proceeding, and no evidence, information, or other knowledge, except that of which official notice is taken, shall be considered.

- 422.4 If the hearing officer rules in favor of the owner or occupant, and finds that the owner or occupant has made payments in excess of the amount due, the appropriate portion of the deposit or escrow funds, plus any accrued interest, shall be credited to the owner or occupant's account within fifteen (15) days of the notice of decision and the balance shall be refunded to the party who posted the surety bond or made the deposit.

- 422.5 If the hearing officer rules in favor of the Utility, and finds that the owner or occupant has outstanding water and sewer charges, the owner or occupant shall be required to pay the difference between the amount in escrow and the amount of outstanding charges, penalties, interest, and fees within fifteen (15) days of the notice of the decision.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1318 (February 12, 1993).



**423 PAYMENT**

- 423.1 Checks or money orders shall be made payable to the "D.C. Treasurer."
- 423.2 Certified checks or cash shall be required for payments exceeding two hundred dollars (\$200).
- 423.3 If any check or other instrument offered to make any payment due is dishonored, the owner or occupant shall be responsible for any fees established by the Office of Tax and Revenue, in addition to all monies owed the District.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1319 (February 12, 1993).

**424 TRANSCRIPTS OF HEARING**

- 424.1 Transcripts of the hearing proceedings may be ordered through the Department of Public Works on a form provided by the Director.
- 424.2 The costs for transcript(s) of the hearing record shall be borne by the owner or occupant.
- 424.3 Fees for transcripts shall be at a rate set by the Director.
- 424.4 Transcripts may be ordered upon payment of a deposit, the amount of which shall be set by the Director.
- 424.5 When the cost of the transcript has been determined to be less than the amount of the transcript deposit, the amount by which the deposit exceeds the cost of the transcript shall be refunded.
- 424.6 When the cost of the transcript is determined to exceed the amount of the transcript deposit, the owner or occupant shall be notified in writing of the balance due for preparing the transcript. The balance due shall be paid before the transcript is released.
- 424.7 If the owner or occupant fails to make a payment when due as required by this section or if any check offered to make payment is dishonored, the request for the transcript shall be dismissed, and the deposit shall not be refunded.
- 424.8 Changes in the official transcripts shall be made only when they involve errors of substance.
- 424.9 A motion to correct a transcript shall be filed with the chief hearing officer and the other party within ten (10) days after receipt of the transcript.
- 424.10 If no objections to the motion are filed within ten (10) days after the filing of the motion, the transcript may, upon the approval of the chief hearing officer, be changed to reflect the corrections.
- 424.11 If objections to a motion to correct a transcript are received, the motion and objection shall be submitted to the reporter or transcriber by the chief hearing

officer with a request to compare the transcript with the stenographic or other record of the hearing.

- 424.12 After receipt of the transcriber's report, an order shall be entered by the chief hearing officer settling the record and ruling on the motion.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1319 (February 12, 1993).

**425 TERMINATION OF WATER AND SANITARY SEWER SERVICES FOR NONPAYMENT**

- 425.1 The purpose of this section is to establish the criteria and procedures for terminating water and sewer services for nonpayment of any charges, penalties, interests, or fees permitted by law to be assessed against the owner or occupant of real property.

- 425.2 Except as otherwise provided in this chapter, the Department shall provide the owner or occupant with a final notice specifying that the water and sewer services will be terminated.

- 425.3 The final notice shall specify the date that service will be subject to termination.

- 425.4 In deciding whether or not to terminate water and sewer services for a delinquent account, the Director may consider the following:

- (a) Whether a tenant is eligible to establish an account in his or her own name;
- (b) The payment history of the owner or occupant; and
- (c) Any other factor relevant to the efficacy of alternate methods of collecting the amounts due and owing.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1320 (February 12, 1993).

**426 HONORING REQUESTS FROM OWNERS FOR TERMINATION OF WATER AND SEWER SERVICES**

- 426.1 The Department, upon receipt of a written request from the owner of a property provided water and sewer services, shall terminate services when one of the following conditions exists:

- (a) The property is vacant;
- (b) There is an outstanding delinquent balance on the account;
- (c) The water and sewer service has been terminated for nonpayment, and it is verified that service has been restored by the occupant or someone solicited by the occupant, without the Department's authorization; or



- (d) The owner provides documentation that the property is occupied by parties without a legal right to be on the property and who occupy the property without the consent of the owner.

426.2 The Department may determine that the request for termination of service will not be honored if the property is occupied and any of the following conditions exists:

- (a) There is no delinquent balance on the account and the property is occupied by tenants or others with the consent of the owner;
- (b) The owner is the account holder, the tenant agrees to assume prospective responsibility for prospective water and sewer charges and the Department determines that it is practicable for the tenant to assume responsibility for the water and sewer charges.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1321 February 12, 1993).

## 427 REAL PROPERTY LIENS AND TAX SALE

427.1 When bills for water and sewer service charges, meter maintenance and repairs, or sanitary sewer services are more than sixty (60) days overdue, the Department shall provide the owner of record with a written notice of intent to file a lien.

427.2 The written notice shall state the following:

- (a) The outstanding balance;
- (b) A notice that if the bills are not paid in full or payment arrangements are not made within ten (10) working days of the date of the notice, a certificate of delinquency shall be filed by the Department with the Recorder of Deeds; and
- (c) That a certificate of delinquency shall constitute a lien against the real property.
- (d) The owner of a single family home has the opportunity to present evidence that he or she occupies the premises.

427.3 The owner of a single family home who occupies the premises shall present evidence of occupancy within ten (10) working days of the date of the notice of intent.

427.4 Acceptable evidence of occupancy shall include the following:

- (a) Income tax returns;
- (b) Non-driver's identification card or a valid driver's license; and
- (c) The most recent electric, gas or telephone bill.

- 427.5 Single family homes that are owner occupied, shall not be sold at tax sale for delinquent water and sewer charges, but a lien shall be attached to the real property until the outstanding balance is paid in full.
- 427.6 At the end of the ten-day (10) period, if the balance has not been paid in full, a Certificate of Delinquency shall be filed by the Department and mailed, by certified mail, to the owner of record at the address listed by the Office of Tax and Revenue for the receipt of tax notices.
- 427.7 Real property tax sales pursuant to this section shall be conducted by the Office of Tax and Revenue.
- 427.8 The rules and regulations applicable to tax sales used by the Office of Tax and Revenue shall govern tax sales, under this section.
- 427.9 If a rule or regulation of the Office of Tax and Revenue conflicts with a provision of the District of Columbia Water and Sewer Operations Amendment Act of 1990, (D.C. Law 8-136) or any statute governing the enforcement of water and sewer liens at tax sale, D.C. Law 8-136 or the applicable statute shall govern.
- 427.10 The Director of the Department of Housing and Community Development may submit bids for properties to be included in the housing program, authorized by §2 of the Act, and to make payments to the Water and Sewer Utility Enterprise Fund from appropriations or sums otherwise provided.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1322 (February 12, 1993).

#### 428 OPPORTUNITY FOR A TENANT TO RECEIVE SERVICE IN OWN NAME

- 428.1 The Department may permit the tenant(s) to receive the bills in their own name, when the owner or agent of the rental property fails to pay the delinquent account in full and it is determined to be practicable.
- 428.2 At least ten (10) working days prior to terminating water and sewer services to the premises, the Department shall send a notice to the tenant(s) in accordance with §425.2.
- 428.3 Once it is determined that the tenants will be billed directly for water and sewer charges, the Department will read the meter on service at the affected address and render a final bill to the owner or the agent for the owner.
- 428.4 If water and sewer charges incurred by the tenant(s) remain unpaid for more than thirty (30) days after the rendering of a bill for the charges, penalties and interest shall be applied to the tenant's outstanding charges, and water and sewer services may be terminated.
- 428.5 If water and sewer service charges billed directly to the tenant or tenants are unpaid and result in the termination of services, the tenant or tenants shall be required to pay all delinquent charges, penalties, interest and fees incurred during the period they received bills.



- 428.6 If service has been terminated due to a delinquent tenant account, services shall not be restored until all charges, penalties, interest and fees for the property are paid in full.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1324 (February 12, 1993).

## **429 SPECIAL PROVISIONS GOVERNING MASTER-METERED APARTMENT BUILDINGS**

- 429.1 This section shall apply to all master-metered water and sewer accounts in residential rental apartment buildings billed directly to the owner, agent, lessor, or manager of the premises (hereinafter referred to as "owner").
- 429.2 The Department shall provide the tenants with the opportunity to assume prospective financial responsibility for the water and sewer services pursuant to the provisions of §§428 and 430.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1325 (February 12, 1993).

## **430 DETERMINATION OF PRACTICABILITY**

- 430.1 The Director may decide to continue water and sewer service to any master-metered residential, rental apartment building despite the nonpayment of a delinquent account by the owner, if the Director determines that it is practicable for the tenants to assume prospective financial responsibility for water and sewer services by receiving the service in their own names, either individually or collectively, on the same terms as any other customer and without any liability for the amount due while service was billed directly to the owner.
- 430.2 In order to qualify as a tenant group or association, the group or tenant association shall provide documentation that the following requirements have been met:
- (a) It is appointed as the authorized agent for each tenant;
  - (b) Have capital reserves equal to the estimated quarterly water and sewer service charges for the premises;
  - (c) It is authorized to collect water and sewer charges from each tenant and to pay the charges;
  - (d) Have a written agreement specifying the fair and equitable apportionment of the water bill to each tenant, and the tenant's agreement to pay his or her portion of the bill to the tenant group or association in a timely manner;
  - (e) Maintain its records and a system of accounts in a manner consistent with generally accepted accounting principles;

- (f) Agree to make its financial records available for inspection by the tenant; and
  - (g) Obtain a bond to guarantee the integrity of its financial transactions.
- 430.3 The Director may find that it is practicable to meter each apartment on the premises if the following requirements are met:
- (a) The owner of the premises agrees in writing to install individual meters for each unit on the premises at the owner's expense and risk;
  - (b) The owner agrees in writing to complete the installation within sixty (60) days of the date of the written agreement; and
  - (c) Each tenant agrees in writing to establish an individual account in his or her name.
- 430.4 The Director may permit tenants to assume prospective financial responsibility for water and sewer service charges if there exists a tenant group or association that is willing and able to accept responsibility for collecting water and sewer bill payments from each tenant at the premises, and of paying each bill when it becomes due.
- 430.5 The Director shall prepare a finding of practicability which contains the following information:
- (a) The address of the premises;
  - (b) The name of the owner;
  - (c) The number of units;
  - (d) A determination of whether it is feasible to meter each unit on the premises, pursuant to the provisions of §430.3 of this chapter;
  - (e) If individual metering is not feasible, whether a tenant group or association exists which meets the requirements of §430.5, and that the requirements of this chapter have been met; and
  - (f) Any other information pertaining to the premises and its service which may have a bearing on the Director's decision on practicability.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1325 (February 12, 1993).

## 431 NOTICE TO TENANTS

- 431.1 At least ten (10) working days prior to terminating water and sewer services to the premises, the Director shall send a notice to the tenant in each apartment unit on the premises.



- 431.2 The notice shall be addressed to the authorized tenant(s) in the building, but the tenant(s) need not be identified by name. Identifying the apartment unit and the correct address of the premises shall be sufficient to provide the tenant with the notice required under this subsection.
- 431.3 The notice shall provide the tenant(s) with the following information:
- (a) The owner is delinquent in the payment of water and sewer service charges;
  - (b) Water and sewer services to the premises may be terminated;
  - (c) The Department may permit the tenants to establish a water and sewer account in their own names if the Director considers it is practicable under the provisions of §430.1 of this section;
  - (d) The tenants may petition the Superior Court to establish a receivership;
  - (e) The tenants have the right to deduct all future payments made by the tenants for water and sewer services from rent owed as provided by §2(g) of D.C. Law 8-136;
  - (f) The tenants may request to receive service in their own name either individually or collectively in accordance with the provisions of §428;
  - (g) The time period within which the tenants or their authorized agents must request to assume prospective responsibility for water and sewer service charges; and
  - (h) The mailing address and telephone number of the office within the Department, where the tenants can obtain additional information.
- 431.4 Each tenant shall agree in writing to establish an individual or collective water and sewer utility service account within thirty (30) days of the date on the notice issued pursuant to §431.3.
- 431.5 Each tenant shall establish individual water and sewer service accounts within sixty (60) days of the date the Director finds that the following requirements are met:
- (a) It is practicable to install individual meters for each unit on the premises, and
  - (b) A tenant group that meets the requirements of this chapter exists.
- 431.6 The tenants' group or association shall establish a water and sewer service account within thirty (30) days of the date the Director determines that it is practicable for the tenants to assume prospective irresponsibility for water and sewer service charges.

- 431.7 Tenants who move into the premises shall execute the agreement with the tenant group or association or establish an individual account.
- 431.8 The failure to execute a written agreement for individual or collective accounts and to establish a water and sewer service account in a timely manner shall result in the termination of water and sewer services to the premises.

SOURCE: Final Rulemaking published at 40 DCR 1300, 1327 (February 12, 1993).

## 432 TENANT PAYMENT OF WATER AND SEWER SERVICE BILL

- 432.1 The Director may terminate water and sewer service to the premises of a tenant who has agreed to accept responsibility for payment of water and sewer services charges individually or with a tenant association when the tenant or the tenant group or association is delinquent in payment.
- 432.2 The rights of the tenant group or association shall terminate upon the occurrence of any of the following:
- (a) The failure to make timely payments;
  - (b) The failure of the tenant group or association to maintain bonding;
  - (c) The failure of the tenant group or association to keep adequate records; or
  - (d) The failure of the tenant group or association to obtain the consent of all the premises' tenants, including the consent of all tenants who move into the premises after the account is established.
- 432.3 Upon termination of the tenant group or association's account, the Department shall bill the owner of the property directly for water and sewer charges.

SOURCE: Final Rulemaking published at 40 DCR 1300, 13280 (February 12, 1993).

## 499 DEFINITIONS

- 499.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

**Administrator** - the Administrator of the Water and Sewer Utility Administration or his or her lawful agent, representative, or designee.

### Comparable periods -

- (a) No change in occupancy;
- (b) The same or like seasons; and
- (c) The same or like number of days and billing periods.



**Department** - the D.C. Department of Public Works.

**Director** - the Director of the D.C. Department of Public Works or his or her lawful agent, representative, or designee.

**Occupant** - any individual, corporation, association or partnership who holds or possesses a premises in subordination to the title of the owner of the premises, with the consent of the owner.

**Owner** - any individual, corporation, association or partnership listed as the legal title holder of record.

**Practicable** - a finding made by the Director that it is feasible to individually meter each apartment on the premises, or that there exists a tenant group or association that meets the Department's requirements.

**Privately owner water meters** - meters required to be installed, at no cost to the District, for the measurement of water supplied and used by commercial and industrial users or by premises with three (3) or more separate dwelling units.

**Residential tenants** - a tenant as defined by the District of Columbia Water and Sewer Operations Amendment Act of 1990 (D.C. Law 8-136), D.C. Code §43-1651(3) (1990 Repl. Vol.).

**Utility** - the Water and Sewer Utility Administration.

**SOURCE:** Final Rulemaking published at 40 DCR 1300, 1329 (February 12, 1993).

